

**REMARKS/ARGUMENTS**

Claims 1-16, 32-34, and 36-38 are pending in the Application and stand rejected. In response, the Applicant has amended Claim 1 and canceled Claims 8, 9 and 37. Applicant respectfully requests the rejections be withdrawn and the claims be granted.

Claim 37 stands objected to under 37 CFR §1.75 as being a substantial duplicate of Claim 36. In response, Applicant has canceled Claim 37. Applicant respectfully requests that this objection be withdrawn.

**A. CLAIM REJECTIONS - OBVIOUSNESS-TYPE DOUBLE PATENTING**

Claims 15, 16 and 22 stand rejected under the judicially created doctrine of obviousness-type double patenting over Claims 29 and 30 of US Patent No. 6,719,973, to *Ding et al* and assigned to the assignee of the present invention. Applicant respectfully traverses this rejection. Claims 15 and 16 depend from Claim 1 and are distinguishable over *Ding et al* for at least the same reasons as Claim 1. That is, *Ding et al* only discloses the use of a single S3 peptide for detection of LPS containing bacteria and for removal of endotoxin. Moreover, Applicant has amended Claim 1 to include the elements of prior Claims 8 and 9, which the Examiner noted were novel over the known references. Claim 22 was previously canceled. Applicant respectfully requests that this rejection be withdrawn.

Claims 1-8, 12, 14, and 36-38 stand rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-10, 12, 20 and 27-36 of *Ding et al* in view of *Tam et al* (Eur. J. Biochem. 269:923-932). Applicant respectfully traverses this rejection. Independent Claim 1 has been amended as noted above to incorporate the elements of prior Claims 8 and 9, which the Examiner noted were novel over the known references. All other cited claims depend upon Claim 1. Therefore, Applicant respectfully requests that this rejection be withdrawn.

**B. CLAIM REJECTIONS UNDER 35 USC §112, FIRST PARAGRAPH**

Claims 1-12, 14-16, 32-34 and 36-38 stand rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses this rejection. Claim 1 has been amended to explicitly recite that the more than one S3 peptide comprises the sequence SEQ ID No: 1. This sequence is clearly recited in the section labeled “Sequence Listing”. Claims 2-12, 14-16, 32-34, 36 and 38 depend from claim 1 and are therefore allowable for at least the same reasons as Claim 1. Applicant therefore respectfully requests that this rejection be withdrawn.

**C. CLAIM REJECTIONS UNDER 35 USC §112, SECOND PARAGRAPH**

Claims 1-16, 32-34 and 36-38 stand rejected under 35 USC §112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection. Claim 1 has been to explicitly recite that the more than one S3 peptide comprises the amino acid sequence set forth SEQ ID No: 1. This sequence is clearly recited in the section labeled “Sequence Listing”. Claims 2-12, 14-16, 32-34, 36 and 38 depend from Claim 1 and are therefore allowable for at least the same reasons as Claim 1.

Claim 13 has been amended in accordance with the Examiner’s helpful suggestion to be placed in independent form and to explicitly recite that the more than one S3 peptide comprises the amino acid sequence set forth SEQ ID No: 9. This sequence is clearly recited in the section labeled “Sequence Listing”. Applicant therefore respectfully requests that this rejection be withdrawn.

**D. CLAIM REJECTIONS UNDER 102(B)**

Claims 15 and 16 stand rejected over *Tan et al* (FASEB Journal, 14:1801-1813, September 2000). Applicant respectfully traverses this rejection. Claims 15 and 16 depend from Claim 1, which is acknowledged by the Examiner to be allowable over the art of record with the

amendments incorporating the elements of Claim 9. Applicant respectfully requests that this rejection be withdrawn.

**E. CLAIM REJECTIONS UNDER 102(A)**

Claims 1-5, 8, 10 and 11 stand rejected over *Li et al* (Protein Engineering, 16(8):629-635, August 2003). Applicant respectfully traverses this rejection. Claim 1, with the amendments incorporating the elements of Claim 9, is acknowledged by the Examiner to be allowable over the art of record. Claims 2-5, 8, 10 and 11 are therefore allowable for at least the same reasons as Claim 1. Applicant respectfully requests that this rejection be withdrawn.

**F. CLAIM REJECTIONS UNDER 102(E)**

Claims 15-16 and 32-34 stand rejected over *Ding et al*. Applicant respectfully traverses this rejection. Claim 1, with the amendments incorporating the elements of Claim 9 is acknowledged by the Examiner to be allowable over the art of record. Claims 15-16 and 32-34 are dependent from Claim 1. Therefore, Claims 15 and 16 are allowable for at least the same reasons as Claim 1. Applicant respectfully requests that this rejection be withdrawn.

**G. CLAIM REJECTIONS UNDER 103(A)**

Claims 1-8, 12, 14, and 36-38 stand rejected over *Ding et al* in view of *Tam et al*. Applicant respectfully traverses this rejection. Claim 1, with the amendments incorporating the elements of Claim 9, is acknowledged by the Examiner to be allowable over the art of record. Claims 2-8, 12, 14, 36 and 38 are therefore allowable for at least the same reasons as Claim 1. Claim 37 has been canceled. Applicant respectfully requests that this rejection be withdrawn.

**H. CLAIM REJECTIONS UNDER 103(A)**

Claims 1-8, 12, 14, and 36-37 stand rejected over *Ding et al* in view of *Tan et al*. Applicant respectfully traverses this rejection. Claim 1, with the amendments incorporating the elements of Claim 9, is acknowledged by the Examiner to be allowable over the art of record. Claims 2-8, 12, 14, and 36 are therefore allowable for at least the same reasons as Claim 1.

Appl. No. 10/563,551  
Amdt. dated June 17, 2009  
Reply to Office Action of March 17, 2009

PATENT

Claim 37 has been canceled. Applicant respectfully requests that this rejection be withdrawn and that the claims be granted.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



Annette S. Parent  
Reg. No. 42,058

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 925-472-5000  
Fax: 415-576-0300  
Attachments  
ASP:atm  
62078790 v1